

## § 204.64

## 17 CFR Ch. II (4–1–10 Edition)

(c) The notice required by this section may be included with the Commission's demand letter required by subpart A of this part.

(d) The Commission will keep a copy of the certificate of service indicating the date of mailing of the notice.

### § 204.64 Hearing.

(a) *Request for hearing.* The Commission will order a hearing, which at the Commission's option may be oral or written, if the debtor submits a written request for a hearing concerning, for debts not previously established by judicial or administrative order, the existence or amount of the debt or the terms of the repayment schedule (for repayment schedules established other than by written agreement under § 204.63(b)(2)), or for debts established by judicial or administrative order, the payment or other discharge of the debt.

(b) *Type of hearing or review.* (1) For purposes of this subpart, whenever the Commission is required to afford a debtor a hearing, the Commission will provide the debtor with a reasonable opportunity for an oral hearing when the Commission determined that the issues in dispute cannot be resolved by review of the documentary evidence, for example, when the validity of the claim turns on the issue of credibility or veracity.

(2) If the Commission determines that an oral hearing is appropriate, the time and location of the hearing shall be established by the Commission. An oral hearing may, at the debtor's option, be conducted either in-person or by telephone conference. All travel expenses incurred by the debtor in connection with an in-person hearing will be borne by the debtor. All telephonic charges incurred during the hearing will be the responsibility of the agency.

(3) In those cases when an oral hearing is not required by this section, the Commission will nevertheless accord the debtor a "paper hearing," that is, the Commission will decide the issues in dispute based upon a review of the written record.

(c) *Effect of timely request.* Subject to paragraph (1) of this section, if the debtor's written request is received by the Commission on or before the 15th business day following the mailing of

the notice of the Commission's intent to seek garnishment, the Commission will not issue a withholding order until the debtor has been provided the requested hearing, and a decision in accordance with paragraphs (i) and (j) of this section has been rendered.

(d) *Failure to timely request a hearing.* If the debtor's written request is received by the agency after the 15th business day following the mailing of the notice of the Commission's intent to seek garnishment, the Commission shall provide a hearing to the debtor. However, the Commission will not delay issuance of a withholding order unless the Commission determines that the delay in filing the request was caused by factors over which the debtor had no control, or the Commission receives information that the Commission believes justifies a delay or cancellation of the withholding order.

(e) *Hearing official.* All hearings shall be presided over by the Commission, or if the Commission so orders, by a hearing official. When the Commission designates that the hearing official shall be an administrative law judge, the Chief Administrative Law Judge shall select, pursuant to 17 CFR 200.30–10, the administrative law judge to preside.

(f) *Procedure.* After the debtor requests a hearing, the hearing official shall notify the debtor of:

(1) The date and time of a telephonic hearing;

(2) The date, time, and location of an in-person oral hearing; or

(3) The deadline for the submission of evidence for a written hearing.

(g) *Burden of proof.* (1) The Commission will have the burden of going forward to prove the existence or amount of the debt.

(2) Thereafter, if the debtor disputes the existence or amount of the debt, the debtor must prove by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. In addition, the debtor may present evidence that the terms of the repayment schedule are unlawful, would cause a financial hardship to the debtor, or that collection of the debt may not be pursued due to operation of law.

(h) *Record.* The hearing official will maintain a record of any hearing provided under this section. A hearing is not required to be a formal evidentiary-type hearing, however, witnesses who testify in oral hearings will do so under oath or affirmation.

(i) *Date of decision.* The hearing official shall issue a written opinion stating his or her decision, as soon as practicable, but not later than sixty (60) days after the date on which the request for such hearing was received by the Commission. If the Commission is unable to provide the debtor with a hearing and a decision is not rendered within sixty (60) days after the receipt of the request for such hearing:

(1) A withholding order will not be issued until the hearing is held and a decision rendered; or

(2) If a withholding order had previously been issued to the debtor's employer, the withholding order will be suspended beginning on the 61st day after the receipt of the hearing request and continuing until a hearing is held and a decision is rendered.

(j) *Content of decision.* The written decision shall include:

(1) A summary of the facts presented;

(2) The findings, analysis and conclusions; and

(3) The terms of any repayment schedules, if applicable.

(k) *Finality of agency action.* Unless the Commission on its own initiative orders review of a decision by a hearing official pursuant to 17 CFR 201.431(c), a decision by a hearing official shall become the final decision of the Commission for the purpose of judicial review under the Administrative Procedure Act.

(l) *Failure to appear.* In the absence of good cause shown, a debtor who fails to appear at a scheduled hearing will be deemed as not having timely filed a request for a hearing.

#### § 204.65 Wage garnishment order.

(a) Unless the Commission receives information that the Commission believes justifies a delay or cancellation of the withholding order, the Commission will send, by first class mail, a withholding order to the debtor's employer within 30 days after the debtor fails to make a timely request for a

hearing (*i.e.*, within 15 business days after the mailing of the notice of the Commission's intent to seek garnishment) or, if a timely request for a hearing is made by the debtor, within 30 days after a decision to issue a withholding order becomes final.

(b) The withholding order sent to the employer will be in the form prescribed by the Secretary of the Treasury, on the Commission's letterhead, and signed by the Chairperson or his or her delegatee. The order will contain the information necessary for the employer to comply with the withholding order. This information includes the debtor's name, address, and social security number, as well as instructions for withholding and information as to where payments should be sent.

(c) The Commission will keep a copy of the certificate of service indicating the date of mailing of the order.

(d) *Certification by employer.* Along with the withholding order, the Commission will send to the employer a certification in a form prescribed by the Secretary of the Treasury. The employer shall complete and return the certification to the Commission within the time frame prescribed in the instructions to the form. The certification will address matters such as information about the debtor's employment status and disposable pay available for withholding.

(e) *Amounts withheld.* (1) After receipt of the garnishment order issued under this section, the employer shall deduct from all disposable pay paid to the applicable debtor during each pay period the amount of garnishment described in paragraph (e)(2) of this section.

(2) Subject to the provisions of paragraphs (e)(3) and (e)(4) of this section, the amount of garnishment shall be the lesser of:

(i) The amount indicated on the garnishment order up to 15% of the debtor's disposable pay; or

(ii) The amount set forth in 15 U.S.C. 1673(a)(2) (Restriction on Garnishment). The amount set forth at U.S.C. 1673(a)(2) is the amount by which the debtor's disposable pay exceeds an amount equivalent to thirty times the minimum wage *See* 29 CFR 870.10.